

those who would appear as witnesses if hearing were had to testify as to the facts stated in the memorandum.

#### **§ 158.6 Determination.**

If no formal hearing is had the matter in issue will be determined by the Commission on the basis of the facts and arguments submitted.

#### **§ 158.7 Assignment for oral hearing.**

In case consent to the shortened procedure is not given, or if at any stage of the proceeding prior to the submission of the case to the Commission any party in interest requests a hearing, the proceeding will be assigned for hearing as provided for by subpart E of part 385 of this chapter. The Commission may also in its discretion set the proceeding for hearing on its own motion at any stage thereof.

[Order 141, 12 FR 8603, Dec. 19, 1947, as amended by Order 225, 47 FR 19057, May 3, 1982]

#### **§ 158.8 Burden of proof.**

The burden of proof to justify every accounting entry shall be on the person making, authorizing, or requiring such entry.

#### **CERTIFICATION OF COMPLIANCE WITH ACCOUNTING REGULATIONS**

#### **§ 158.10 Examination of accounts.**

All natural gas companies not classified as Class C or Class D prior to January 1, 1984 shall secure for each year, the services of an independent certified public accountant, or independent licensed public accountant (licensed on or before December 31, 1970), certified or licensed by a regulatory authority of a State or other political subdivision of the United States, to test compliance in all material respects of those schedules that are indicated in the General Instructions set out in the applicable Annual Report, Form No. 2 or Form No. 2-A, with the Commission's Uniform System of Accounts and published accounting releases. The Commission expects that identification of questionable matters by the independent accountant will facilitate their early resolution and that the independent accountant will seek advisory rulings by the Commission on

such items. This examination shall be deemed supplementary to periodic Commission examinations of compliance.

[Order 581, 60 FR 53065, Oct. 11, 1995]

#### **§ 158.11 Report of certification.**

Each natural gas company not classified as Class C or Class D prior to January 1, 1984 shall file with the Commission a letter or report of the independent accountant certifying approval, together with the original and each copy of the filing of the applicable Annual Report, Form No. 2 or Form No. 2-A, covering the subjects and in the format prescribed in the General Instructions of the applicable Annual Report. The letter or report shall also set forth which, if any, of the examined schedules do not conform to the Commission's requirements and shall describe the discrepancies that exist. The Commission shall not be bound by the certification of compliance made by an independent accountant pursuant to this paragraph.

[Order 581, 60 FR 53065, Oct. 11, 1995]

#### **§ 158.12 Qualifications of accountants.**

The Commission will recognize only independent certified public accountants, or independent licensed public accountants who were licensed on or before December 31, 1970, who are in fact independent. For example, an accountant will not be considered independent with respect to any person or any of its parents or subsidiaries in who he has, or had during the period of report, any direct financial interest. The Commission will determine the fact of independence by considering all the relevant circumstances including evidence bearing on the relationships between the accountant and that person or any affiliate thereof.

(Sec. 10, 52 Stat. 826; 15 U.S.C. 717i)

[37 FR 26006, Dec. 7, 1972, as amended at 60 FR 53065, Oct. 11, 1995]

### **PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES**

Sec.

161.1 Applicability.

## § 161.1

161.2 Definitions.  
161.3 Standards of conduct.

AUTHORITY: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352.

### § 161.1 Applicability.

This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157, and subparts B or G of part 284 and is affiliated in any way with a natural gas marketing or brokering entity and conducts transportation transactions with its marketing or brokering affiliate. The requirements of this part also apply to pipeline sales operating units to the extent provided in § 284.286 of this chapter.

[Order 566-A, 59 FR 52904, Oct. 20, 1994]

### § 161.2 Definitions.

(a) *Affiliate*, when used in reference to any person in this part and § 250.16 of this chapter means another person which controls, is controlled by, or is under common control with, such person.

(b) *Control* (including the terms “controlling,” “controlled by,” and “under common control with”) as used in this part and § 250.16 of this chapter, includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

(c) *Marketing or brokering* as used in this part and § 250.16 of this chapter means a sale of natural gas to any person or entity by a seller that is not an interstate pipeline, except when:

- (1) The seller is selling gas solely from its own production;
- (2) The seller is selling gas solely from its own gathering or processing facilities; or
- (3) The seller is an intrastate natural gas pipeline or a local distribution company making an on-system sale.

(d) *Potential shippers*, as used in this part and § 250.16 of this chapter, means all current transportation and sales customers of an interstate natural gas pipeline, and all persons who have pending requests for transportation

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service or for information regarding transportation service on that pipeline.

(e) *Transportation*, as used in this part and § 250.16 of this chapter, includes storage, exchange, backhaul, displacement, or other methods of transportation.

[Order 566, 59 FR 32897, June 27, 1994, as amended at Order 566-A, 59 FR 52904, Oct. 20, 1994]

### § 161.3 Standards of conduct.

An interstate natural gas pipeline must conduct its business to conform to the following standards:

(a) It must apply a tariff provision relating to transportation in the same manner to the same or similarly situated persons if there is discretion in the application of the provision.

(b) It must strictly enforce a tariff provision for which there is no discretion in the application of the provision.

(c) It may not, through a tariff provision or otherwise, give its marketing affiliate preference over nonaffiliated customers in matters relating to part 284 transportation including, but not limited to, scheduling, balancing, transportation, storage, or curtailment priority.

(d) It must process all similar requests for transportation in the same manner and within the same period of time.

(e) It may not disclose to its marketing affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper.

(f) To the extent it provides to a marketing affiliate information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system.

(g) To the maximum extent practicable its operating employees and the operating employees of its marketing affiliate must function independently of each other.

(h)(1) If a pipeline offers a transportation discount to an affiliated marketer, or offers a transportation discount for a transaction in which an affiliated marketer is involved, the pipeline must make a comparable discount contemporaneously available to all

similarly situated non-affiliated shippers.

(2) Within 24 hours of the time at which gas first flows under a transportation transaction in which an affiliated marketer receives a discounted rate or a transportation transaction at a discounted rate in which an affiliated marketer is involved, the pipeline must post a notice on its Electronic Bulletin Board, operated pursuant to §284.10(a) of this chapter, providing the name of the affiliate involved in the discounted transportation transaction, the rate charged, the maximum rate, the time period for which the discount applies, the quantity of gas scheduled to be moved, the delivery points under the transaction, any conditions or requirements applicable to the discount, and the procedures by which a non-affiliated shipper can request a comparable offer. The posting must remain on the EBB for 30 days from the date of posting. The posting must conform with the requirements of §284.10(a) of this chapter and the pipeline's tariff requirements relating to Electronic Bulletin Boards. Access to the information must be provided using the same protocols and procedures used for the pipeline's Electronic Bulletin Board.

(i) It must file with the Commission procedures that will enable shippers and the Commission to determine how the pipeline is complying with the standards in this section.

(j) A pipeline must maintain its books of account and records (as prescribed under part 201) separately from those of its affiliate.

(k) A pipeline must maintain a written log of waivers that the pipeline grants with respect to tariff provisions that provide for such discretionary waivers and provide the log to any person requesting it within 24 hours of the request.

(l) A pipeline must post the names and addresses of its marketing affiliates on its web site on the public Internet and update the information within three business days of any change. A pipeline must also state the date the information was last updated. Postings must conform with the requirements of §284.10 of this chapter.

[Order 497, 53 FR 22161, June 14, 1988; 53 FR 25240, July 5, 1988; Order 497-A, 54 FR 52792, Dec. 22, 1989; Order 497-D, 57 FR 58982, Dec. 14, 1992; Order 497-E, 59 FR 255, Jan. 4, 1994; Order 566, 59 FR 32898, June 27, 1994; Order 566-A, 59 FR 52904, Oct. 20, 1994; 61 FR 39068, July 26, 1996; Order 599, 63 FR 43079, Aug. 12, 1998]